IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9686 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI RAMJIBHAI SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA DATTA FOR MS KRISHNA U MISHRA for Petitioner

MR KT DAVE, ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta, for learned advocate Ms.K.U.Mishra on behalf of the petitioner and Mr. K.T.Dave learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 10-6-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that in all 6 prohibition cases are registered against the petitioner at Nashabandhi (East) Police Station in between 21-9-98 to 8-6-99. That in each case, the country made liquor has been seized in each case. That two cases are pending for trial in the Court while the other four cases are pending for further investigation. Over and above, that two witnesses have given their statement on assurance of their anonymity against the petitioner vide their statement dated 9-6-99 regarding the anti social activities of the petitioner and have narrated the alleged incidents dated 25-5-99 and 20-5-99 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been submitted at bar on behalf of the petitioner that the representation dated 24-1-2000 was made by the petitioner and has claimed the documents referred to and relied on by the detaining authority. However, the respondents have failed to supply the same. That despite of raising a specific plea vide Para 18-A, no affidavit in reply has been filed on behalf of the respondents and as such, there is no explanation, thereby, the constitutional mandate under Article 22(5) is violated which has rendered the continued detention invalid.

#. In the instant case, on scrutiny of papers, it appears that despite the service of rule, no affidavit in reply has been filed to controvert the allegations and contentions raised vide Para 18 A of the petition.

#. The learned AGP Mr.K.T.Dave has fairly stated at bar that the representation of the petitioner was rejected on 28-1-2000 by the State Government and the communication was sent to the detaining authority to furnish the documents to the petitioner / detenu. However, there is no information as regards whether the documents have been supplied to the detenu or not.

#. In the absence of any affidavit filed on behalf of the respondents, the fact remains uncontroverted and as such, documents having not been supplied to the detenu, I am constrained to hold that the constitutional mandate having been breached, the continued detention of the petitioner has become illegal and as such, impugned order is required to be quashed and set aside.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-6-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - SURESHBHAI RAMJIBHAI SHARMA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 21-2-2000 [A.K.Trivedi, J.]

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